UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 523

Case No. 550: LABBEN

Against: The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Jerome Ackerman, Vice-President; Mr. Samar Sen;

Whereas, on 5 November 1989, Mahmoud Labben, a recipient of a retirement benefit paid by the United Nations Joint Staff Pension Fund (the Pension Fund), filed an application that did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 10 April 1990, the Applicant, after making the necessary corrections, again filed an application containing pleas that read in part as follows:

"II. PLEAS

...

I am therefore appealing to the United Nations Administrative Tribunal as a staff member of a member organization of the United Nations system who contributed to the United Nations Joint Staff Pension Fund without interruption throughout the period from 12 March 1974 to 15 November 1986 ..., for recognition of my legitimate rights within the meaning of the WHO Staff Rules, specifically rules 730, 1030 and 1085 thereof, and article 33(a) of the Regulations of the United Nations

Joint Staff Pension Fund, and for logical, fair compensation based on the number of years left to me had I continued to lead a normal working life until retirement age.

Specifically, I am requesting:

1. Compensation totalling $US 595,000 in damages for the physical disabilities, ... The basis for calculating this amount is as follows:

- I was recruited by WHO in 1974 at the age of 31 (date of birth: 1 March 1942)

- I worked with WHO for 12 years: from 1974 to 1986

- Years left until normal retirement age of 60 years = 17 years (43 + 17 = 60)

- Annual base salary = $US 35,000

- Compensation for remaining 17 years = 35,000 x 17 = $US 595,000

2. Compensation of $US 80,190 for the harm suffered and the 27 1/2 month delay in the very slow procedures adopted by the WHO Staff Pension Committee and the Standing Committee of the United Nations Joint Staff Pension Board in handling my case, which dates back to 15 February 1987, ...

- Period from 15 February 1987, the date on which I applied to the WHO Staff Pension Committee for a disability benefit, to 31 July 1989, when I was informed of the refusal to grant this benefit by the United Nations Joint Staff Pension Board = 27.5 months

$US 35,000 : 12 X 27.5 = $US 80,190.

3. Automatic entitlement, from 16 November 1986 until age 55, the age of early retirement, to a disability benefit from the United Nations Joint Staff Pension Fund, unless the WHO Administration and the Fund Administration resolve my case by transferring me to a non-field post in any WHO service, as I have requested repeatedly but without success.

4. Full coverage by the Fund of all expenses relating to my medical care and that of all members of my family.

5. Reimbursement of a fixed amount of $US 25,000 for costs incurred since 15 February 1989, in dealing with the WHO Staff Pension Committee and the Joint Staff Pension Fund, the cost of stamps, telegrams, telex, registered mail, photocopies and travel, and medical costs incurred since 16 November 1986.

..." (Translated from French)

Whereas the Respondent filed his answer on 15 February 1991;

Whereas the Applicant filed written observations on 3 May 1991;

Whereas the facts in the case are as follows:

The Applicant, a former staff member of the World Health Organization (WHO), became a participant in the Pension Fund from 12 March 1974, upon his entry into service as a health inspector. At the time of his first fixed-term contract he was given a medical classification of "1A". The Applicant developed various proctological, ophthalmological and endocrinological problems which, he asserts, affected his health during his entire service for WHO. On 26 September 1980, he was diagnosed to be suffering from diabetes, a condition he asserts was triggered by treatment for service-related endocrinological problems.

On 10 July 1985, the Applicant's appointment was extended by two years from its then date of expiration, 2 December 1985. The Government of Rwanda notified WHO on 4 October 1985, that it sought a sanitary engineer rather than a health inspector. In a telex of 2 December 1985, WHO informed the Applicant that his appointment was terminated under WHO Staff Rule 1050 on the grounds of abolition of his post, effective 4 January 1986. Although the Applicant was entitled to only one month's notice under staff rule 1050.3, he was given three months' notice as provided under staff rule 1040 for non-renewal of contract and under staff rule 1030.3.1 for "termination for reasons of health".

The Applicant was put on sick leave as of 14 January 1986, and in a letter dated 21 January 1986, he was informed that his appointment would continue as long as he was on sick leave. On 15 November 1986, the WHO Medical Service and the Applicant's own treating physician, Dr. Nagati, certified that the Applicant was fit for sedentary work; the Organization having no suitable employment for him, confirmed his termination as of that date.

On 15 February 1987, the Applicant requested the WHO Staff Pension Committee to approve the award of a disability benefit from the United Nations Joint Staff Pension Fund. At its meeting, held on 4 May 1987, the WHO Staff Pension Committee unanimously rejected the Applicant's request, and on 14 May 1987, the Secretary of the WHO Staff Pension Committee informed him of the Committee's decision.

On 24 June 1987, the Applicant requested the WHO Staff Pension Committee to review its decision. At its meeting, held on 21 January 1988, the Committee confirmed its earlier decision. On 17 February 1988, the Secretary of the Committee so informed the Applicant.

In letters dated 25 May and 20 June 1988, to the Secretary of the United Nations Joint Staff Pension Board (the "Secretary of the Board"), the Applicant lodged an appeal to the Board's Standing Committee (the "Standing Committee") against the decision of the WHO Staff Pension Committee. The Applicant was subsequently informed of his right to request the establishment of a medical board under rule K.7 of the Pension Fund's Administrative Rules and, on 11 July 1988, he requested that such a board be established to assist the Standing Committee in its consideration of his case.

The Medical Board consisted of Dr. Samir Chebbi of el Menzah, Tunisia, selected by the Applicant; Dr. Jean Demé, Director of the UN Joint Medical Service in Geneva, designated by the Medical Consultant to the Pension Board; and Prof. Daniel Pometta, Chief of the Nutrition and Diabetics Division of the Cantonal Hospital of Geneva, selected by the former two.

The Medical Board met in Geneva on 15 February 1989. Its conclusions read as follows:

"...

- Mr. Labben has insulin-dependent diabetes, the appearance of which coincided with a Steroid-Retard injection which could have been a causative factor; the first symptoms were observed in September 1980;

- This diabetes is difficult to control;

- There have not been any degenerative complications caused by the diabetes;

- There is an undetermined degree of loss of field of vision.

The Board decides, unanimously, that Mr. Labben:

1. Is and will remain unsuited for service in the field;

2. Has been capable of performing sedentary work since 15 November 1986, in an environment which permits him to benefit from adequate medical supervision". (Translated from French).

Dr. Chebbi, the medical practitioner selected by the Applicant, added a note (quoted in paragraph II below) when he signed the Medical Board's report in April 1989.

At its 169th meeting, held on 21 July 1989, the Standing Committee considered the Applicant's appeal against the decision by the WHO Staff Pension Committee, and decided unanimously to uphold the decision of that Committee. On 31 July 1989, the Secretary of the Board informed the Applicant of the Standing Committee's decision.

On 10 April 1990, the Applicant filed with the Tribunal the application referred to earlier.

On 26 June 1990, the ILO Administrative Tribunal in its Judgement No. 1026 (in re Labben) considered the Applicant's appeal challenging the terms and conditions under which WHO had terminated his fixed-term contract prior to its expiration date, the denial of further sick leave and the lack of compensation for service-incurred illness or injury. It awarded the Applicant damages for delays in the consideration of his case and costs.

Whereas the Applicant's principal contention is:

The Applicant is entitled to a disability benefit in the light of the findings of the Medical Board, which deemed he was unfit for service in the field, the Applicant's normal area of activity.

Whereas the Respondent's principal contentions are:

1. The Applicant was not incapacitated for further service on the date of his separation from WHO.

2. The Applicant was accorded due process in the consideration of his claim.

The Tribunal, having deliberated from 13 to 30 May 1991, now pronounces the following judgement:

I. The application in this case challenges a decision of the Standing Committee of the United Nations Joint Staff Pension Board upholding a decision by the WHO Staff Pension Committee denying the Applicant's request for an award of a disability benefit. The Tribunal will therefore examine whether the challenged decision reflected non-observance of the Regulations and Rules of the Pension Fund.

II. It appears that the central question turns on whether at the time the Applicant was separated from WHO service on 15 November 1986, he was "incapacitated for further service in a member organization reasonably compatible with his abilities" within the meaning of article 33(a) of the Pension Fund Regulations. In fact, a Medical Board had been convened at the request of the Applicant to assist the Standing Committee in considering the medical aspects of the case. It met in Geneva on 15 February 1989 and decided unanimously that, although the Applicant was unsuited for service in the field, he had been capable, since the date of his separation, of performing sedentary work in a location where he could remain under adequate

medical supervision. The member of the Medical Board designated by the Applicant added the following note when he signed the Board's report in April 1989:

> "Dr. Chebbi agrees with the Board's conclusions but wishes to recall that the position for which Mr. Labben had been recruited included, to a considerable extent, service in the field. He wished to add therefore: 'that Mr. Labben has the right, medically, to receive a disability benefit according to article 33 if his re-employment in a sedentary post with a United Nations Organization is not possible. At his rather advanced age and in view of his present medical condition, he will not find employment elsewhere'." (Translated from French)

III. In the Tribunal's view, although Dr. Chebbi's quoted statement purports to express a medical conclusion as to the Applicant's medical condition, the doctor's words, in reality, indicate a legal conclusion on the Applicant's entitlement to a disability pension. Such a conclusion is not considered by the Tribunal as falling within the scope of Dr. Chebbi's responsibilities as a member of the Medical Board or within his competence.

IV. Since, in normal circumstances, the Tribunal does not review medical conclusions reached by a medical board, it accepts, in accordance with its consistent jurisprudence, the Board's finding that the Applicant was capable of performing sedentary work on and after 15 November 1986. WHO asserts that, as of that date, it was unable to find a suitable post for the Applicant, the post he previously held having been abolished in the fall of 1985. With respect to this matter, the ILO Administrative Tribunal, in its Judgement No. 1026 of 26 June 1990, involving the Applicant and the same circumstances, stated:

> "The Complainant cannot properly deny that, as the Chief of Personnel told him in his letter of 9 December 1986, the Organization had made efforts to find him another post. It cannot be taken to task for having failed to find a post he was qualified and fit for." (ILOAT Judgement No. 1026, para. 4, p. 6).

The fixed-term contract then held by the Applicant had been scheduled to expire on 31 December 1987 and had been terminated by WHO effective 4 January 1986, because of the prior abolition of his post. However, because the Applicant was on sick leave in January 1986, his contract was extended until 15 November 1986.

V. The question whether WHO had, on 15 November 1986, a suitable, vacant, sedentary post reasonably compatible with the Applicant's abilities and failed to offer it to him was properly raised before the ILO Administrative Tribunal, which examined it and conclusively ruled on it. This Tribunal is unable to find that the challenged decision of the Standing Committee violated any of the Applicant's rights under article 33(a) of the Pension Fund Regulations. Nor does the Tribunal find that the Applicant suffered any deprivation of his procedural rights or that he was denied due process by the Standing Committee.

VI. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Roger PINTO
President

Jerome ACKERMAN
Vice-President

Samar SEN
Member

Geneva, 30 May 1991

Paul C. SZASZ
Acting Executive Secretary